WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 535

(Senators Palumbo, Wells, McCabe and Fitzsimmons, original sponsors)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]
AN ACT to repeal §3-2-24 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-3 of said code; and to amend and reenact §3-2-2, §3-2-4a, §3-2-18, §3-2-19, §3-2-21, §3-2-23, §3-2-25 and §3-2-29 of said code, all relating to the maintenance of voter registration lists and related records generally; repealing provisions governing superseded voter list purging procedures; updating specific constitutional provisions relating to voting; modifying when a person under the age of eighteen may vote in a primary election; updating the processes and responsibilities for statewide voter registration and establishing county and state roles in the voter registration process; modifying the processes of maintaining voter registration records; specifying county roles in maintaining voter registration files for municipal elections; modifying processes for the maintenance of records in the statewide voter registration database; permitting registration records to be shared across state lines pursuant to certain programs; modifying processes for cancellation of deceased or ineligible voters’ registrations; providing county and state roles in the systematic purging program for removal of ineligible voters
from active voter registration records; and providing for the custody of paper and electronic voter registration records.

Be it enacted by the Legislature of West Virginia:

That §3-2-24 of the Code of West Virginia, 1931, as amended, be repealed; that §3-1-3 of said code be amended and reenacted; and that §3-2-2, §3-2-4a, §3-2-18, §3-2-19, §3-2-21, §3-2-23, §3-2-25 and §3-2-29 of said code be amended and reenacted, all to read as follows:

ARTICLE I. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3. Persons entitled to vote.

1 Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively reside. But no person who has not been registered as a voter as required by law, or who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state, county or municipality in which he or she offers to vote, shall be permitted to vote at such election while such disability continues, unless otherwise specifically provided by federal or state code. Subject to the qualifications otherwise prescribed in this section, however, a minor shall be permitted to vote only in a primary election if he or she will have reached the age of eighteen years on the date of the general election next to be held after such primary election.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-2. Eligibility to register to vote.
(a) Any person who possesses the constitutional qualifications for voting may register to vote. To be qualified, a person must be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified:

Provided, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a federal, state, county, municipal or special primary election if he or she will be eighteen years of age by the time of the corresponding general election.

(b) Any person who has been convicted of a felony, treason or bribery in an election, under either state or federal law, is disqualified and is not eligible to register or to continue to be registered to vote while serving his or her sentence, including any period of incarceration, probation or parole related thereto. Any person who has been declared mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that disability continues.

§3-2-4a. Statewide voter registration database.

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state, as follows:

(1) The statewide voter registration database shall serve as the single system for storing and managing the official list of registered voters throughout the state.
(2) The statewide voter registration database shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) In the statewide voter registration database, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The statewide voter registration database shall be coordinated with other agency databases within the state and elsewhere, as appropriate.

(5) The Secretary of State, any clerk of the county commission or any authorized designee of the Secretary of State or clerk of the county commission may obtain immediate electronic access to the information contained in the statewide voter registration database.

(6) The clerk of the county commission shall electronically enter voter registration information into the statewide voter registration database on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The statewide voter registration database shall serve as the official voter registration list for conducting all elections in the state.

(b) The Secretary of State or any clerk of a county commission shall perform maintenance with respect to the statewide voter registration database on a regular basis as follows:
(1) If an individual is to be removed from the statewide voter registration database, he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, et seq., the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the statewide voter registration database with state agency records and shall establish procedures for the removal of names of individuals who are not qualified to vote because of felony status or death. No state agency may withhold information regarding a voter's status as deceased or as a felon unless ordered by a court of law.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the statewide voter registration database;

(2) Only voters who are not registered, who have requested in writing that their voter registration be canceled or who are not eligible to vote are removed from the statewide voter registration database;

(3) Duplicate names are eliminated from the statewide voter registration database; and

(4) Deceased individuals' names are eliminated from the statewide voter registration database.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the statewide voter registration database established under this section.
(c) The Secretary of State shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, et seq., registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter, who have not otherwise updated their voter registration address and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote;

(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U. S. C. §1973gg, et seq.; and

(3) Through safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may only be accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number;
(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's Social Security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles identification card or a Social Security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. The number assigned under this subdivision shall be the unique identifying number assigned under the statewide voter registration database.

(g) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the statewide voter registration database with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §401, et seq., the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve of this article.

§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records.

(a) For the purposes of this article:
(1) "Original voter registration record" means all records submitted or entered in writing or electronically, where permitted by law, for voter registration purposes, including:

(A) Any original application or notice submitted by any person for registration or reinstatement, change of address, change of name, change of party affiliation, correction of records, cancellation, confirmation of voter information or other request or notice for voter registration purposes; and

(B) Any original entry made on any voter's registration record at the polling place, or made or received by the clerk of the county commission relating to any voter's registration, such as records of voting, presentation of identification and proof of age, challenge of registration, notice of death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence or other original document which may affect the status of any person's voter registration.

(2) "Active voter registration records" means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates and other required information for all persons within a county who are registered to vote and whose registration has not been designated as inactive or canceled pursuant to the provisions of this article.

(3) "Inactive voter registration records" means the registration records, whether on paper or in electronic format, containing the names, addresses, birth dates and other required information for all persons designated inactive pursuant to the provisions of section twenty-seven of this article following the return of the prescribed notices as undeliverable at the address provided by the United States Postal Service or entered on the voter registration, or for
failure of the contacted voter to return a completed confirmation notice within thirty days of the mailing.

(4) "Canceled voter registration records" means the records containing all required information for all persons who have been removed from the active and inactive voter registration records and who are no longer registered to vote within the county.

(5) "Pending application records" means the temporary records containing all information submitted on a voter registration application, pending the expiration of the verification period.

(6) "Rejected application records" means the records containing all information submitted on a voter registration application which was rejected for reasons as described in this article.

(7) "Confirmation pending records" means the records containing all required information for persons who have been identified to be included in the next succeeding mailing of address confirmation notices as set forth by the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg, et seq.).

(b) For the purposes of this chapter or of any other provisions of this code relating to elections conducted under the provisions of this chapter, whenever a requirement is based on the number of registered voters, including, but not limited to, the number of ballots to be printed, the limitations on the size of a precinct, or the number of petition signatures required for election purposes, only those registrations included on the active voter registration files shall be counted and voter registrations included on the inactive voter registration files, as defined in this subdivision, shall not be counted.
(c) Active voter registration records, confirmation pending records and inactive voter registration records may be maintained in the same physical location, providing the records are coded, marked or arranged in such a way as to make the status of the registration immediately obvious. Canceled voter registration records, pending application records and rejected application records may be maintained in separate physical locations. However, all such records shall be maintained in the statewide voter registration database, subject to this article.

(d) The effective date of any action affecting any voter’s registration status shall be entered on the voter record, including the effective date of registration, change of name, address or party affiliation or correction of the record, effective date of transfer to inactive status, return to active status or cancellation. When any registration is designated inactive or is canceled, the reason for the designation or cancellation and any reference notation necessary to locate the original documentation related to the change shall be entered on the voter record.

(e) Within one hundred twenty days after each primary, general, municipal or special election, the clerk of the county commission shall enter the voting records into the statewide voter registration database.

§3-2-19. Maintenance of active and inactive registration records for municipal elections.

(a) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) Clerks of the county commissions shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal
precinct boundaries are the same and all registrants of the
precinct are entitled to vote in state, county and municipal
elections within the precinct or when the registration records
of municipal voters within a county precinct are separated
and maintained in a separate municipal section or book for
that county precinct and can be used either alone or in
combination with other pollbooks or voter lists to make up a
complete set of registration records for the municipal election
precinct.

(2) Upon request of the municipality, and if the clerk of
the county commission does not object, separate municipal
precinct books shall be maintained in cases where municipal
or ward boundaries divide county precincts and it is
impractical to use county pollbooks or voter lists or separate
municipal sections of those pollbooks or voter lists. If the
clerk of the county commission objects to the request of a
municipality for separate municipal precinct books, the State
Election Commission must determine whether the separate
municipal precinct books should be maintained.

(3) No registration record may be removed from a
municipal registration record unless the registration is
lawfully transferred or canceled pursuant to the provisions of
this article in both the county and the municipal registration
records.

(b) Within thirty days following the entry of any
annexation order or change in street names or numbers, the
governing body of an incorporated municipality shall file
with the clerk of the county commission a certified current
official municipal boundary map and a list of streets and
ranges of street numbers within the municipality to assist the
clerk in determining whether a voter's address is within the
boundaries of the municipality.
§3-2-21. Maintenance of records in the statewide voter registration database in lieu of precinct record books.

(a) The clerk of the county commission of each county shall maintain a voter registration data system record book into which all required records of appointments of authorized personnel, tests, repairs, program alterations or upgrades and any other action by the clerk of the county commission or by any other person under supervision of the clerk affecting the programming or records contained in the system, other than routine data entry, alteration, use, transfer or transmission of records shall be entered.

(b) The clerk of the county commission shall appoint all personnel authorized to add, change or transfer voter registration information within the statewide voter registration database, and a record of each appointment and the date of authorization shall be entered as provided in subsection (a) of this section. The assignment and confidential record of assigned system identification or authorized user code for each person appointed shall be as prescribed by the Secretary of State.

(c) Voter registration records entered into and maintained in the statewide voter registration database shall include the information required for application for voter registration, for maintenance of registration and voting records, for conduct of elections and for statistical purposes, as prescribed by the Secretary of State.

(d) No person shall make any entry or alteration of any voter record which is not specifically authorized by law. Each entry or action affecting the status of a voter registration shall be based on information in an original voter registration record, as defined in section eighteen of this article.
(e) The clerk of the county commission shall maintain, within the statewide voter registration database, active and inactive voter registration records, confirmation pending records, canceled voter registration records, pending application records and rejected application records, all as defined in section eighteen of this article.

(f) Upon receipt of a completed voter registration application, the clerk shall enter into the statewide voter registration database the information provided on the application, mark the records as pending and initiate the verification or notice of disposition procedure as provided in section sixteen of this article. Upon completion of the verification or notice of disposition, the status of the voter record shall be properly noted in the statewide voter registration database.

(g) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to an active voter registration record, the change shall be entered in the record and the required notice of disposition mailed.

(h) Upon receipt of an application or written confirmation from an inactive voter of a change of address within the county, change of name, change of party affiliation or other correction to a registration record, any necessary change shall be entered in the record, the required notice of disposition mailed and the record updated to active status, and the date of the transaction shall be recorded. Receipt of an application or written confirmation from an inactive voter that confirms the voter's current address shall be treated in the same manner.
(i) Upon receipt of a notice of death, a notice of conviction or a notice of a determination of mental incompetence, as provided in section twenty-three of this article, the date and reason for cancellation shall be entered on the voter’s record and the record status shall be changed to canceled.

(j) Upon receipt from the voter of a request for cancellation or notice of change of address to an address outside the county pursuant to the provisions of section twenty-two of this article, or as a result of a determination of ineligibility through a general program of removing ineligible voters as authorized by the provisions of this article, the date and reason for cancellation shall be entered on the voter’s record and the record status shall be changed to canceled.

§3-2-23. Cancellation of registration of deceased or ineligible voters.

The clerk of the county commission shall cancel the registration of a voter:

(1) Upon the voter’s death as verified by:

(A) A death certificate from the Registrar of Vital Statistics or a notice from the Secretary of State that a comparison of the records of the registrar with the county voter registration records show the person to be deceased;

(B) The publication of an obituary or other writing clearly identifying the deceased person by name, residence and age corresponding to the voter record; or

(C) An affidavit signed by the parent, legal guardian, child, sibling or spouse of the voter giving the name and birth date of the voter, and date and place of death;
(2) Upon receipt of an official notice from a state or federal court that the person has been convicted of a felony, of treason or bribery in an election;

(3) Upon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence;

(4) Upon receipt from the voter of a written request to cancel the voter's registration, upon confirmation by the voter of a change of address to an address outside the county, upon notice from a voter registrar of another jurisdiction outside the county or state of the receipt of an application for voter registration in that jurisdiction, or upon notice from the Secretary of State that a voter registration application was accepted in another county of the state subsequent to the last registration date in the first county, as determined from a comparison of voter records; or

(5) Upon failure to respond and produce evidence of continued eligibility to register following the challenge of the voter's registration pursuant to the provisions of section twenty-eight of this article.

§3-2-25. Systematic purging program for removal of ineligible voters from active voter registration files; comparison of data records; confirmation notices; public inspection list.

(a) The systematic purging program provided in this section shall begin no earlier than October 1 of each odd-numbered year and shall be completed no later than February 1 of the following year. The clerk of the county commission shall transmit or mail to the Secretary of State a certification that the systematic purging program has been completed and all voters identified as no longer eligible to vote have been
canceled in the statewide voter registration database in accordance with the law no later than February 15 in the year in which the purging program is completed.

(b) The Secretary of State shall provide for the comparison of data records of all counties. The Secretary of State shall, based on the comparison, prepare a list for each county which shall include the voter registration record for each voter shown on that county’s list who appears to have registered or to have updated a voter registration in another county at a subsequent date. The resulting lists shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure for those voters as prescribed in section twenty-six of this article.

(c) The Secretary of State may provide for the comparison of data records of counties with the data records of the Division of Motor Vehicles, the registrar of vital statistics and with the data records of any other state agency which maintains records of residents of the state, if the procedure is practical and the agency agrees to participate. Any resulting information regarding potentially ineligible voters shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure as prescribed in section twenty-six of this article.

(d) The records of all voters not identified pursuant to the procedures set forth in subsections (b) and (c) of this section shall be combined for comparison with United States Postal Service change of address information, as described in section 8(c)(A) of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, et seq.). The Secretary of State shall contract with an authorized vendor of the United States Postal Service to perform the comparison. The cost of the
change of address comparison procedure shall be paid for from the combined voter registration and licensing fund established in section twelve of this article and the cost of the confirmation notices, labels and postage shall be paid for by the counties.

(c) The Secretary of State shall return to each county the identified matches of the county voter registration records and the postal service change of address records.

(1) When the change of address information indicates the voter has moved to a new address within the county, the clerk of the county commission shall enter the new address on the voter record and assign the proper precinct.

(2) The clerk of the county commission shall then mail to each voter who appears to have moved from the residence address shown on the registration records a confirmation notice pursuant to section twenty-six of this article and of section 8(d)(2) of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, et seq.). The notice shall be mailed, no later than December 31, to the new address provided by the postal service records or to the old address if a new address is not available.

(f) The clerk of the county commission shall indicate in the statewide voter registration database the name and address of each voter to whom a confirmation notice was mailed and the date on which the notice was mailed.

(g) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (c) of this section, the clerk shall immediately enter the date and type of response received in the statewide voter registration database and shall then proceed in accordance with the provisions of section twenty-six of this article.
(h) For purposes of complying with the record keeping and public inspection requirements of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg, et seq.), and with the provisions of section twenty-seven of this article, the public inspection lists shall be maintained either in printed form kept in a binder prepared for such purpose and available for public inspection during regular business hours at the office of the clerk of the county commission or in read-only data format available for public inspection on computer terminals set aside and available for regular use by the general public. Information concerning whether or not each person has responded to the notice shall be entered into the statewide voter registration database upon receipt and shall be available for public inspection as of the date the information is received.

(i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (e) of this section who fails to respond to the notice or to update his or her voter registration address by February 1 immediately following the completion of the program, shall be designated inactive in the statewide voter registration database. Any voter designated inactive shall be required to affirm his or her current residence address, on a form prescribed by the Secretary of State, upon appearing at the polls to vote.

(j) In addition to the preceding purging procedures, all counties using the change of address information of the United States Postal Service shall also, once each four years during the period established for systematic purging in the year following a presidential election year, conduct the same procedure by mailing a confirmation notice to those persons not identified as potentially ineligible through the change of address comparison procedure but who have not updated their voter registration records and have not voted in any election during the preceding four calendar years. The
purpose of this additional systematic confirmation procedure shall be to identify those voters who may have moved without filing a forwarding address, moved with a forwarding address under another name, died in another county or state so that the certificate of death was not returned to the clerk of the county commission, or who otherwise have become ineligible.

§3-2-29. Custody of original registration records.

(a) All original registration records in paper format shall remain in the custody of the county commission, by its clerk, or, electronically, in the statewide voter registration database and shall not be removed except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the Secretary of State pursuant to the provisions of section six, article one-a of this chapter.

(b) All original voter registration records shall be retained for a minimum of five years following the last recorded activity relating to the record, except that any application which duplicates and does not alter an existing registration shall be retained for a minimum of two years following its receipt. The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific retention times and procedures required for original voter registration records.

(c) Prior to the destruction of original voter registration applications or registration cards of voters whose registration has been canceled at least five years previously, the clerk of the county commission shall notify the Secretary of State of the intention to destroy those records. If the Secretary of State determines, within ninety days of the receipt of the notice, that those records are of sufficient historical value that
25 microfilm or other permanent data storage is desirable, the
26 Secretary of State may require that the records be delivered
27 to a specified location for processing at state expense.

28 (d) Active, inactive, pending, rejected and canceled
29 registration records shall be maintained as a permanent
30 record, as follows:

31 (1) Individual canceled registration records shall be
32 maintained in the statewide voter registration database for a
33 period of at least five years following cancellation. Upon the
34 expiration of five years, those individual records may be
35 removed from the statewide voter registration database and
36 disposed of in accordance with the appropriate documented
37 retention policy.

38 (2) Rejected registration records shall be maintained in the
39 same manner as provided for canceled registration records.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm